

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**MICHAEL KELLY,**

**Plaintiff,**

**v.**

**BUSINESS INFORMATION GROUP,  
INC.**

**Defendant.**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Civil Action No.: 2:15-cv-6668 (DS)**

**PLAINTIFF’S SUPPLEMENTAL MEMORANDUM REGARDING  
DEFENDANT’S MOTION TO STRIKE CLASS ALLEGATIONS**

Pursuant to this Court’s December 22, 2016 Order (Dk. 51), Plaintiff submits this supplemental brief regarding Defendant’s pending Motion to Strike Class Allegations (Dk. 39).

Plaintiff brought this case as a class action against Defendant Business Information Group, Inc. (“BIG”), asserting as the sole class claim that Defendant violated section 1681k of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681k, because it follows no *strict procedures* and also failed to send him or any other employment candidate *notice* that it was selling adverse public records data about them. Compl., Dk. 1 at ¶¶ 13-20. If the allegations regarding the section 1681k claim set forth in Plaintiff’s Complaint are insufficient to survive a motion for judgment on the pleadings, as this Court has found (Dk. 50), only his individual claim under FCRA section 1681e(b) remains. Compl. Dk. 1 at ¶¶ 22-26. Plaintiff does not intend to seek to certify his section 1681e(b) claim as a class claim; thus, without the section 1681k claim, there would be no remaining class allegations to strike.

However, Plaintiff believes that he can amend the allegations related to his FCRA section 1681k claim in order to remedy the issues identified by this Court's December 22, 2016 Order, which did not dismiss the section 1681k claim with prejudice. Plaintiff will demonstrate in an amended complaint that there were specific items of personal identifying information which were available in the public record at the time BIG produced the consumer report about him which would have allowed BIG to easily determine that the record did not pertain to Plaintiff. Furthermore, Plaintiff will plead that the judgment at issue in this case had been marked as satisfied in the public record, but that BIG failed to obtain and report this final disposition, instead reporting that the judgment as open. Thus, Plaintiff will allege in an amended complaint that the data at issue was neither complete nor up to date, because it failed to include necessary identifying information and did not include the current public record status of the item reported.

Plaintiff's anticipated amendment would allow him to move forward with the section 1681k claim and prosecute it on a class-wide basis. Plaintiff therefore respectfully submits that no further action should be taken on the pending motion to strike class allegations until this Court has the opportunity to consider Plaintiff's motion for leave to amend and the accompanying proposed amended complaint, which he intends to file on Monday, January 9, 2017.

Dated: January 6, 2017

Respectfully,

By: John Soumilas  
James. A. Francis  
John Soumilas  
Lauren K.W. Brennan  
FRANCIS & MAILMAN, P.C.  
Land Title Building, 19th Floor  
100 South Broad Street  
Philadelphia, PA 19110  
Tel. (215) 735-8600  
Fax (215) 940-8000

jfrancis@consumerlawfirm.com  
jsoumilas@consumerlawfirm.com  
lbrennan@consumerlawfirm.com

Kristi Cahoon Kelly, *pro hac vice*  
KELLY & CRANDALL, PLC  
4084 University Drive, Suite 202A  
Fairfax, VA 22030  
(703) 424-7576 – Telephone  
(703) 591-0167 – Facsimile  
E-mail: kkelly@kellyandcrandall.com

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2017, a true and correct copy of the foregoing was forwarded by

William J. Simmons  
**LITTLER MENDELSON, P.C.**  
Three Parkway 1601 Cherry Street, Suite 1400  
Philadelphia, PA 19102.1321  
267.402.3047  
wsimmons@littler.com

Rod M. Fliegel  
**LITTLER MENDELSON, P.C.**  
333 Bush Street, 34th Floor  
San Francisco, CA 94104  
415.433.1940  
rfliegel@littler.com

Chad J. Kaldor  
**LITTLER MENDELSON, P.C.**  
Fifth Third Center  
21 East State Street, 16th Floor  
Columbus, OH 43215  
614.463.401  
ckaldor@littler.com

Daniel P. Shanahan  
**WILLIAMS & CONNOLLY, LLP**  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
202.434.5174  
dshanahan@wc.com

*Attorneys for Defendant  
Business Information Group, Inc.*

s/ John Soumilas  
Counsel for Plaintiff